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No. 89-562

In the Supreme Court of the United States

OCTOBER TERM, 1989

FEDERAL LABOR RELATIONS AUTHORITY, PETITIONER

v.

NATIONAL TREASURY EMPLOYEES UNION AND
UNITED STATES NUCLEAR REGULATORY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY MEMORANDUM FOR THE PETITIONER

WILLIAM E. PERSINA *
Acting Solicitor
JILL A. GRIFFIN
Attorney
Federal Labor Relations Authority
500 C Street, S.W.
Washington, D.C. 20424
(202) 382-0781

* Counsel of Record

TABLE OF AUTHORITIES

Cases: Page

Fort Stewart Schools v. *FLRA*, cert. granted, No. 89-65 (Oct. 2, 1989) 1, 2, 3

NTEU v. *FLRA*, petition for cert. pending, No. 89-198 1

Statutes:

20 U.S.C. 241 2

Atomic Energy Act of 1954, Pub. L. No. 83-703, § 161(d), 68 Stat. 919, 42 U.S.C. 2201(d) 2

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The United States Nuclear Regulatory Commission (NRC), in its brief responding to the Federal Labor Relations Authority's petition for a writ of certiorari, suggests (Resp. Br. 5-6, 8) that the Court hold the petition for a writ of certiorari for disposition in light of *Fort Stewart Schools* v. *FLRA*, cert. granted, No. 89-65 (Oct. 2, 1989).[1] In this connection, NRC

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[1] Respondent's brief also is directed to the petition for a writ of certiorari filed by the National Treasury Employees Union (NTEU) in *NTEU* v. *NRC*, petition for cert. pending,

asserts (Resp. Br. 5) that the first issue presented in this case is in all material respects identical to the first issue presented in *Fort Stewart*; and that the second and third issues presented in this case are analogous to the second and third issues presented in *Fort Stewart*.

The Authority does not concur that it is appropriate to hold the instant certiorari petition for disposition in light of *Fort Stewart*. As NRC itself recognizes (Resp. Br. 5), the second and third issues in the instant case can be said to be no more than analogous to the second and third issues in *Fort Stewart*. In particular, as to the third issue presented in *Fort Stewart* and the third issue in the instant case, there are significant differences in the statutes involved in resolving those issues. In *Fort Stewart* the third issue involves consideration of 20 U.S.C. 241, which in relevant part requires that compensation of federal dependents schools personnel be set without reference to pay-setting laws that establish the pay of most federal employees; and requires "to the maximum extent practicable" that the education provided by and average per pupil costs for the dependents schools be comparable to schools in the local community.

In contrast, the third issue in the instant case involves consideration of section 161(d) of the Atomic Energy Act, 42 U.S.C. 2201(d), which requires NRC to pay its employees in accordance with the pay-setting General Schedule system covering most federal employees, "except that, to the extent the Commission deems such action necessary to the discharge

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No. 89-198. The NTEU certiorari petition seeks review of the same Fourth Circuit judgment at issue in the instant case.

of its responsibilities, personnel may be employed and their compensation fixed without regard to such laws." In 1975 NRC exempted itself from the coverage of the General Schedule. Thus, *Fort Stewart* and the instant case involve consideration of two distinctly different federal laws that allow two different federal agencies to set employee compensation in different ways. Therefore, even if resolution of the third issue in *Fort Stewart* "could shed light" on the third issue in the instant case, as NRC suggests (Resp. Br. 7), it will not necessarily be dispositive of that issue.

The third issue presented in the two cases is therefore sufficiently distinct that the Authority disagrees with respondent's suggestion that the petition for a writ of certiorari in the instant case be held and disposed of in light of the Court's resolution of *Fort Stewart*. The Authority respectfully submits, as suggested in its petition for a writ of certiorari (Pet. 17 note 13), that consolidation of the two cases for oral argument before the Court is appropriate. Such consolidation, the Authority respectfully submits, would provide for the most efficient use of the Court's time while also providing for complete disposition of all relevant issues in the two cases.[2]

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[2] The Acting Solicitor General authorizes the filing of this Reply Memorandum.

Respectfully submitted.

WILLIAM E. PERSINA *
Acting Solicitor
JILL A. GRIFFIN
Attorney
* Counsel of Record

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